



INFORMATION SHEET

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WAIVER OF PENALTY POLICY

Request for waiver of a penalty requires an evaluation of the facts presented in writing by the employer. For the Department to waive the penalty, the employer must establish that "good cause" or "reasonable cause" exists, based on the facts involved in the actual case. "Good cause" or "reasonable cause" are issues when an employer fails to comply in a timely manner with certain requirements of the California Unemployment Insurance Code (CUIC) or the California Code of Regulations, Title 22.

Provisions for waiver of penalty for "good cause" are in CUIC Sections 803, 991, 1034, 1111, 1112, 1112.5, 1114, 1116, 1117, 1132, and 1222. Provisions for waiver of penalty for "reasonable cause" are in CUIC Sections 13051, 13052, 13054, and 13057. "Good cause" and "reasonable cause" have been interpreted by the California Unemployment Insurance Appeals Board (CUIAB) to have virtually the same meaning.

Penalty charged under CUIC Sections 1126, 1135, and 13052.5, or any other CUIC section that does not specifically indicate provisions for waiver of penalty, cannot be waived.

Waiver of Penalty

A "waiver of penalty" request will not be considered until the employer submits a written request that explains why "good cause" exists and the reason(s) for his or her untimeliness. The Department will assume good cause does not exist unless the employer can establish that good cause does exist.

In addition, all delinquent reports/returns must be filed and all contributions and associated interest must be paid before a request for a "good cause penalty waiver" will be considered.

Existence of Good Cause

For "good cause" to exist there must be unusual circumstances which could not be reasonably foreseen. Employers are expected to discharge their basic employer responsibilities and therefore must establish all of the following:

1. They acted in good faith.
2. They acted in a diligent, timely, and prudent manner.
3. The circumstances could not have been reasonably foreseen.

Good cause exists where the circumstances causing the delay are clearly beyond the control of the employer, or where the delay is due to a mistake or inadvertence under circumstances not reasonably foreseeable by the employer. In other words, the delay is not attributable to the employer's fault.

A "good cause" determination must always take into account the total time period taken by the employer or their representative to comply with the Department's requirements.

Precedent Tax Decision

The Department is required to follow the guidelines set forth in precedent tax decisions issued by the (CUIAB) when determining whether good cause exists.

According to Precedent Tax Decision P-T-23, good cause must be more than a mere excuse. It must be a substantial reason which affords a legal excuse. Each situation must be carefully analyzed to determine whether the employer appeared to have acted in good faith and in the same diligent manner that a prudent business person would have acted under similar circumstances (28 Am. Jr. 643).

Precedent Tax Decision P-T-449 addressed good cause in the case of a delayed remittance. In the decision, the CUIAB stated that the employer had established a system for filing returns/reports and remittances that he/she had reason to believe was adequate and the belief was grounded in prior experience and not mere speculation. Therefore, an isolated instance of inadvertence not reasonably foreseeable by the employer constitutes a substantial reason which affords a legal excuse. In this case, the prior history of the petitioner was considered showing strong evidence that the petitioner had reason to believe his/her system was adequate.

In addition, the CUIAB stated in P-T-449 that when an employer is aware that his/her procedures for reporting and paying their tax obligations are inadequate, and that employer does not meet the time limits for filing the proper forms or making the proper payments to the Department, they will be at fault and will not have "good cause" for the delay.

NOTE: Unforeseen financial hardship is not grounds for good cause. In Precedent Tax Decision P-T-449, the CUIAB stipulated that, "lack of funds to pay the amount owing on a return does not constitute good cause."

Examples Where Good Cause Does Exist

The employer's return and remittance for California was inadvertently placed in the incorrect envelope and mailed timely to the Commonwealth of Virginia. The CUIAB determined the employer's late filing was due to an isolated instance of inadvertence not reasonably foreseeable by the petitioner and not attributable to any fault of the petitioner (P-T-449).

An employer had a computer system that maintained all payroll records. The system had worked effectively for nine months allowing the employer to file and pay timely their payroll tax returns. Due to a computer malfunction, the employer could not secure information needed to determine the contributions due. As a result, the return was filed late. It was determined the employer filed and paid the return as soon as it was possible and had no previous history of late filing; therefore, good cause existed.

An employer failed to affix proper postage to an envelope with a timely remittance enclosed. The CUIAB determined the employer made a good faith effort to file on time and believed it had done so. All other payments and filings were made timely to the Department and this was an exception to that practice. In this case, good cause existed (T-85-9).

The hospitalization or death of the employer or a member of the immediate family may be good cause for late filing or make late payments. The employer must substantiate that the death or illness has a direct effect on those people responsible for the filing and/or paying of the returns and related information.

Good cause existed where the employer, under the distress of the sudden illness of the employer's father, was unable to file and pay the contributions due timely (T-78-149).

Catastrophic occurrences such as fire or earthquake or delays attributable to the postal service would clearly give the employer good cause. (P-T-449). The catastrophic occurrences would be subject to when the calamity actually took place in relation to the time when the taxes were due.

Examples Where Good Cause Does Not Exist

The CUIAB held that an employer's reliance upon another to perform acts does not constitute "good cause" since he/she may not complain of his/her voluntary delegation of authority and as principal, is bound by the action or inaction of his agent (TD-771).

The employer contracted with an accountant to handle their tax obligations. The accountant failed to file reports while assuring the employer that all deadlines were being met. The employer had a duty to select a responsible accountant, but did not do so. The employer also failed to specify what assurances were given by the accountant. Therefore, the employer failed to establish it acted with the degree of diligence a person of ordinary prudence would have used under the same or similar circumstance (T-85-173). In this case, good cause did not exist.

An employer's public accountant prepared the return, but no one was available to draw the check. The accountant mailed the employer's return unaccompanied by payment. The CUIAB found the cause for failure to be the account's lack of knowledge of the law coupled with the employer's failure to have a responsible agent with the authority to draw checks on their behalf to properly discharge their responsibility to make contributions. Good cause did not exist because there was no element beyond the control of the employer (TD-1177).

People entering business have the responsibility to know their tax obligations, as it is common knowledge that there are taxes to be paid by an operator of a business. If the employer has not made a reasonable attempt to determine their obligations under the law, good cause will not be present. Employers must be aware of their statutory obligations. Ignorance of the law will not be considered "good cause."

Lack of funds to pay contributions does not constitute "good cause" (TD-748, TD-1210 and TD-2035).

The mere fact that one partner may have been defrauded does not constitute good cause for the partnership not filing and paying returns in a timely manner (T-86-104).

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